

Deadlines. “ Defendants have given no indication about their opposition to the motion previously and actually instructed plaintiff to file “sooner rather than later.” Never have they written or stated “We object to an extension” or “We strenuously object to your motion.” As to scheduling conflicts, plaintiff sought as early as September 19, 2014 to obtain dates for a week of depositions into November and December to include in a declaration in support of the pending . However, defendants never offered any such dates and since October 2 currently have refused such requests for dates to get on the calendar, pending the hearing on October 8, 2014.

2. Defendants have Not Properly Confirmed Dates for Third-Party Depositions Prior to Sending Out Notices

In June, defendants noticed multiple plaintiff family depositions without consulting with counsel or plaintiff as to dates and availability. As to the “silent” issue as to October 8, 2014, there may have been a miscommunication, however a check of ECF indicates that the Patterson hearing was calendared on September 16, 2014 for October 8, 2014, three days before defendants assumed it was available on September 19, 2014 and one day before they first inquired of it on September 17, 2014, and copied notices on plaintiff on September 29, 2014 when counsel was out of the office for the Jewish New Years. The Court may take judicial notice that dockets fill up quickly and “assuming” dates , not offered as available 19 days out, are or stay continually open, without actual confirmation, is a perilous practice. Below is an excerpt of the email exchange supporting plaintiff's reply. The most plaintiff can say is the use of “Unopposed” may have taken an additional liberty in the conveyance of defendants' apparent acquiescence to the Motion. However, no prejudice or harm has ensued, no misrepresentation transpired and it is at best benign pleading hyperbole.

From: Angie ALCORN <angie.alcorn@multco.us>
To: Mr Leonard Berman <easyrabbi@yahoo.com>
Cc: Justin GERICKE <justin.gericke@multco.us>
Sent: Wednesday, September 17, 2014 9:28 AM
Subject: Fwd: Kowalczyk Lambert-Gates RFA 9-15-14

Mr. Berman:

Please let me know if you will be seeking a set over of the discovery deadlines in this matter. October is right around the corner and we would like you to address it sooner rather than later - in the off chance that the judge denies your motion.

Also, it is my understanding that you will be unavailable on October 3, 9 and 10 - are you available October 6, 7, and 8? How about the week of October 13 - 17? Justin is available during all of these days and we could reserve these days (or a combination of them) for depositions. Please advise.

Warmly,

Angie Alcorn

Paralegal
Multnomah County Attorney's Office
510 SE Hawthorne Blvd., Ste. 500
Portland, OR 97214
503.988.3138 Phone
503.988.3377 Fax
angie.alcorn@multco.us

Dated this 6th day of October, 2014.

Respectfully Submitted,

S//S Leonard R. Berman

LEONARD R. BERMAN, OSB# 96040
Trial Attorney for Plaintiff